

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JUDY SMITH,

Plaintiff-Appellant,

v

BRAD ENDRES,

Defendant,

and

RICK REYNOLDS and STACY KEELER,

Defendants/Cross-Plaintiffs-  
Appellees,

and

VILLAGE OF FREEPORT,

Defendant/Cross-Defendant.

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Before: JANSEN, P.J., and SAWYER and FORT HOOD, JJ.

PER CURIAM.

Plaintiff, Judy Smith, appeals as of right the trial court's orders dismissing her complaint and denying her motion for reconsideration. We affirm.

The underlying factual basis for this case is a fireworks display that occurred on September 18, 2010. Plaintiff and her husband live on a dairy farm adjacent to a community center owned by defendant Village of Freeport ("the Village"). The Village granted defendant Stacey Keeler permission to have a fireworks show at the community center, and defendant Rick Reynolds executed the fireworks display.<sup>1</sup> Plaintiff alleged that some of the fireworks ignited

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<sup>1</sup> Defendant Brad Endres was merely a bystander at the fireworks display and was dismissed from the action.

over her farm, causing her cattle to stampede and resulting in injuries to several of the cattle. On January 26, 2011, plaintiff filed a complaint against defendants. After various adjournments, delays, and proceedings, all claims against the Village were dismissed, and it was agreed that plaintiff would refile her claim against Keeler and Reynolds. On September 12, 2013, plaintiff refiled her complaint. Inexplicably, the case number from the 2011 complaint was used on the 2013 complaint. The court communicated to the parties that the case number needed to be changed by way of a motion and stipulated order, but no action was taken. On December 11, 2013, the deputy clerk sent a letter to the parties and stated that the case had been open for more than 91 days and more than 28 days had passed since they were instructed to file a motion. The deputy clerk stated that if no action were taken by December 20, 2013, she would request that the trial court close the case. There were no additional documents filed in the case, and on January 7, 2014, the trial court entered an order dismissing the complaint. Plaintiff thereafter filed a motion for reconsideration, which was denied.

Plaintiff argues that the trial court abused its discretion in dismissing her complaint and denying her motion for reconsideration. We disagree. The Court reviews the dismissal of a case for a lack of progress for an abuse of discretion. *North v Dep't of Mental Health*, 427 Mich 659, 661; 397 NW2d 793 (1986). The grant or denial of a motion for reconsideration is also reviewed for an abuse of discretion. *Corporan v Henton*, 282 Mich App 599, 605-606; 766 NW2d 903 (2009). "An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes." *Id.* (citation omitted).

Pursuant to MCR 2.502(A), a trial court may sua sponte "order that an action in which no steps or proceedings appear to have been taken within 91 days be dismissed for lack of progress unless the parties show that progress is being made or that the lack of progress is not attributable to the party seeking affirmative relief." Pursuant to MCR 2.502(B), "[i]f a party does not make the required showing, the court may direct the clerk to dismiss the action for lack of progress." MCR 2.502(C) provides for reinstatement of a dismissed action: "On motion for good cause, the court may reinstate an action dismissed for lack of progress on terms the court deems just." Our Supreme Court has held that dismissal for lack of progress will only be found to be appropriate after considering the following factors:

- 1) the degree of the plaintiff's personal responsibility for the delay, 2) the amount of prejudice to the defendant caused by the delay, 3) whether there exists a lengthy history of deliberate delay, and 4) whether the imposition of lesser sanctions would not better serve the interests of justice. [*North*, 427 Mich at 662.]

In the present case, plaintiff was personally responsible for the delay. The delay in proceeding with the case was due to filing the 2013 complaint with the old case number. Plaintiff was aware that a motion and stipulated order were necessary to correct this issue. Yet, plaintiff failed to act. In addition, Reynolds and Keeler were prejudiced by the additional delay in litigation that they had been defending against for nearly three years. There was also a history of deliberate delay on the part of plaintiff. The clerk informed plaintiff orally and in writing that the trial court required a motion and stipulated order, to no avail, and nearly four months after the 2013 complaint had been filed there was *no* action by plaintiff other than filing the complaint. The trial court gave plaintiff several opportunities to comply with its instruction to file a motion and stipulated order, but plaintiff persistently failed to comply. Under these

circumstances, lesser sanctions would not better serve the interests of justice. Considering the length of, circumstances, and reasons for delay, the trial court did not abuse its discretion when it dismissed plaintiff's complaint for lack of progress pursuant to MCR 2.502.

Affirmed. Defendants, the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Kathleen Jansen

/s/ David H. Sawyer

/s/ Karen M. Fort Hood